

HOUSE BILL 3959

By Curtiss

AN ACT to amend Tennessee Code Annotated, Title 7 and Title 65, to enact the "Competitive Cable and Video Services Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 59, is amended by adding Sections 2 through 23 of this act as a new part.

SECTION 2. This part shall be known as the "Competitive Cable and Video Services Act".

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Authority" means the Tennessee Cable and Video Service Authority, hereafter TCVSA, created pursuant to Section 4 of this act.

(2) "Cable service" has the meaning set forth in 47 U.S.C. § 522(6). Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d);

(3) "Cable service provider" has the meaning set forth in 47 U.S.C. 522(5);

(4) "Franchise" has the meaning set forth in 47 U.S.C. § 522(9), and additionally includes the authorization to construct or operate a video service provider's wireline network facility that is used to provide video service and is not a cable system;

(5) "Franchise authority" means "franchising authority" as set forth in 47 U.S.C. § 522(10) or other governmental entity empowered by federal, state, or local law to grant a franchise. With regard to a state franchisee and the areas covered by the state franchise, the Tennessee Regulatory Authority, hereafter TRA, is the sole franchising authority. With respect to a franchise agreement with a municipality or county governing

authority, that municipality or county is the sole franchising authority within the service area governed by that franchise agreement;

(6) "Institutional Networks," hereafter I-NET, means capacity, fibers, or both from within the primary cable network and separately constructed networks that are dedicated to municipal users or other governmental and educational users, as determined by the municipality, for two-way broadband, non-commercial, non-competitive, not-for-profit communications. The I-NET includes all equipment and maintenance of equipment required to make the capacity available including but not limited to fiber, copper wire, cable modems, coaxial cable, and all switching, routing, transmitting and receiving equipment necessary for the use of the I-NET as determined by the TCVSA.

(7) "Institutional Network Services," means the provision of an I-NET by a franchisee to municipal users and other governmental and educational users, as determined by the municipality, pursuant to this part for non-commercial, non-competitive, not-for-profit applications including but not limited to two-way dedicated voice, data, video, Internet and telephony channels connecting and interconnecting user facilities; computerized traffic control systems; GIS systems; and the interconnection of facilities serving police, fire, and other public safety systems.

(8) "Municipality" means any means any incorporated city or town, county, or metropolitan government in the state.

(9) "Public right-of-way" means the area on, along, below, or above a public roadway, highway, street, sidewalk, alley or waterway;

(10) "Side agreements" means addendums or modifications to the state cable and video franchise agreement that are consistent with this part and the applicable rules promulgated by the TCVSA and that are approved by the TRA.

(11) "Standard State Cable or Video Franchise Agreement," hereafter state franchise, state franchise agreement, or state cable or video franchise agreement, means the terms, conditions, and requirements developed by the TCVSA that shall govern the operations and activities of cable or video service providers offering cable or video service under a state franchise.

(12) "State franchisee" or "franchisee" means the person or entity to whom a state cable and video franchise agreement is granted by the TRA;

(13) "Subscriber" means the consumer or the person or entity which is receiving cable or video service from a state franchisee;

(14) "TCVSA" means the Tennessee Cable and Video Service Authority created pursuant to Section 4 of this act;

(15) "TRA" means the Tennessee Regulatory Authority;

(16) "Video programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station, as set forth in 47 U.S.C. § 522(20), regardless of the technology used to deliver the service;

(17) "Video service" means video programming services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d), or video programming provided as part of and via a service that enables users to access content, information, electronic mail, or other services offered over the public Internet, exclusive of Internet protocol delivered video programming; and

(18) "Video service provider" means a provider of video service. A video service provider is deemed the same as a cable service provider and is subject to all the same requirements of this part.

SECTION 4.

(a) There is created the Tennessee Cable and Video Service Authority (TCVSA) for the purposes of developing the state cable and video franchise agreement, conducting periodic review of the agreement, and making changes necessary to ensure the continued efficacy of the agreement.

(b) The TCVSA shall consist of fifteen (15) members as follows:

(1) The commissioner of economic and community development, or the commissioner's designee; the comptroller of the treasury, or the comptroller's designee; and the chair of the Tennessee regulatory authority shall also be members of the authority, with the chair of the TRA also acting as chair of the authority.

(2) All other members of the authority shall be appointed to serve three (3) year terms except for the initial appointments. Appointments shall be made as follows by the speaker of the senate and the speaker of the house of representatives:

(A) Six (6) members shall be nominated by the Tennessee Municipal League, hereafter TML. Two (2) nominees shall be from municipalities with a population of twenty thousand (20,000) or less, two (2) from municipalities with a population of more than twenty thousand (20,000) but less than fifty thousand (50,000), and two (2) from municipalities with a population of fifty thousand (50,000) or more, all populations according to the 2000 federal census or any subsequent

federal census. Each speaker shall appoint one nominee as a member of the authority from each population category and shall initially appoint one (1) nominee for one (1) year, one (1) for two (2) years, and one (1) for three (3) years.

(B) Six (6) members shall be nominated by the Tennessee County Services Association, hereafter TCSA. Two (2) nominees shall be from counties with a population of forty thousand (40,000) or less, two (2) from counties with a population of more than forty thousand (40,000) but less than one hundred thousand (100,000), and two (2) from counties with a population of one hundred thousand (100,000) or more, all populations according to the 2000 federal census or any subsequent federal census. Each speaker shall appoint one nominee as a member of the authority from each population category and shall initially appoint one (1) nominee for one (1) year, one (1) for two (2) years, and one (1) for three (3) years

(c) One member from each population category in subsection (b) shall be included in each of the designated terms. TML and TCSA shall each ensure that at least one (1) of their nominees is a racial minority and shall strive to ensure that at least three (3) of the twelve (12) members nominated by both organizations are members of a racial minority.

(d) The rules of order and procedure of the TCVSA shall provide for a process by which members of the authority may be removed or may resign their position as a member of the authority. Members of the authority may be removed for poor attendance, insufficient participation or unethical conduct. A vacancy created by

resignation, removal or death shall be filled in the same manner as the nomination or appointment was made for such position.

(e) No official business may be conducted unless eight (8) members are present and such business shall be conducted in accordance with the rules of order and procedure adopted by the TCVSA. No decision rendered by the TCVSA shall be valid unless at least eight (8) members vote in favor of such action and the decision is rendered in accordance with the rules of order and procedure adopted by the TCVSA.

(f) The authority is an independent agency, but may call upon the TRA, and its staff for assistance, and the TRA shall provide the requested assistance. The TRA, however, has no oversight or any other administrative responsibility relative to the TCVSA, except as provided under this part.

(g) Members of the authority shall serve as members without compensation, but the TRA shall reimburse members of the TCVSA for any expenses directly related to service on the authority as members of state boards are reimbursed when funds allow.

(h) Any activities resulting in a cost to the TRA and TCVSA and any administrative costs incurred by the TRA or TCVSA pursuant to their responsibility under this part shall be funded by application fees and penalties assessed against any provider violating the provisions of an agreement or side agreement entered into pursuant to the provisions of this part.

SECTION 5. The TRA is the state cable and video service franchising authority in Tennessee. Notwithstanding any other provision of federal, state or local law to the contrary, a state cable and video franchise is available to any person or entity, provided such person or entity complies with the requirements of this part and the applicable rules established pursuant to this part. Any person or entity desiring to provide cable or video service in Tennessee must secure a state or local franchise. A person or entity desiring to secure a state

cable or video service franchise must make application to the TRA. The TRA shall enter into state franchising agreements with cable and video service providers meeting all the requirements established pursuant to Section 7 of this part. The term of a statewide franchise shall be ten (10) years. Providers applying for a state franchise shall define the area or areas in which they propose to provide cable or video service in the state franchise agreement.

SECTION 6. In addition to other powers granted in this part, the TRA shall:

(1) Grant a nonexclusive franchise in the service area requested when an applicant complies with all applicable provisions of federal law, this part, and the rules of the TRA and the TCVSA promulgated pursuant to this part. The TRA shall render a decision on any application for a state cable or video franchise within ninety (90) days of receipt of a completed application, but provided, however, the TRA may extend this period under extraordinary circumstances. The TRA shall provide the applicant and the affected municipality's written notification of its intent to extend the period, the length of the extension, and the reasons for extending the period for consideration;

(2) Conduct appropriate investigations of applicants pursuant to Section 7(2);

(3) Review any proposed side agreement to ensure that such agreements are consistent with federal law, this part, and the requirements developed by the TCVSA;

(4) Deny a franchise, if an applicant fails to comply with the applicable laws and rules established for applicants under this part;

(5) Implement and administer state franchise agreements;

(6) Receive complaints from municipalities, counties, or individual citizens relative to compliance by the state franchisee with the state agreement and any side agreements and take necessary actions as authorized in this part to remedy meritorious complaints;

(7) Revoke or suspend a franchise, or issue civil penalties for violation of the franchise agreement, this part, applicable federal laws or applicable rules;

(8) Be granted powers of enforcement, consistent with this part, to ensure that municipalities and counties receive payment for the franchise fees owed;

(9) Promulgate and enforce any rules necessary to carry out its responsibility under this part. The rules promulgated by the TRA shall be promulgated in accordance with the uniform administrative procedures act, title 4, chapter 5. Such rules shall have the effect of law; and

(10) Exercise any authority that may be exercised by a franchising authority under federal or state law.

SECTION 7. In addition to other authority granted in this part, the TCVSA shall:

(1) Adopt rules of order and procedure and organize itself to accomplish its tasks, including adopting a process by which a member may resign his or her position as an authority member, for removal of members and for filling vacancies on the authority;

(2) Provide an application process, including an application form on which the applicant must agree to conform to all applicable federal, state, and local laws; indicate the areas to be served with a service area map and description; include a deployment plan; declare any exceptions to the state agreement the applicant is seeking by way of a proposed side agreement; name the location of the principal place of business and provide names and locations of principal executive officers; state that the applicant is not indebted in any way under any past or present cable or video service franchise agreement; certify that the applicant does not have an unexpired local franchise agreement within the proposed service area; and state that the applicant is otherwise authorized to do business in Tennessee;

(3) Establish reasonable qualifications for franchisees, including reasonable capitalization, insurance, and bonding requirements to ensure the ability of the applicant to fulfill the franchise agreement and to protect the consumer, local governments, and the state from the acts of the franchisee;

(4) Establish a non-refundable franchise application fee for a state franchise that shall not exceed ten thousand dollars (\$10,000) per application. Any amendment to the agreement or alteration of a franchise area shall require the filing of an application for amendment. The TCVSA shall establish a non-refundable fee for such amendment or alteration which shall not exceed five thousand dollars (\$5,000);

(5) Establish an expedited process for granting a state franchise to existing cable or video service providers in the state and existing operators in the public rights-of-way;

(6) Develop reasonable terms and conditions of state franchise agreements, including but not limited to establishing the state franchise fee rate, which shall govern the operations and activities of providers operating in the state under a state franchise;

(7) Provide for a process that allows for mutually agreed upon side agreements between a local governmental entity and a state franchisee, provided such agreements:

(A) Are consistent with federal law;

(B) Are approved by the local governing body and the TRA;

(C) Are no more favorable or less burdensome than any existing local cable franchise in effect in the municipality or county;

(D) Do not reduce customer service or consumer protections afforded under the state franchise agreement;

(E) Do not involve a derogation of municipal or county powers; and

(F) Are solely intended to expand access to cable or video service, facilitate compliance with anti-discrimination requirements, or enhance services afforded subscribers within the municipality or county;

(8) Issue reasonable rules consistent with this part for the issuance of a state franchise;

(9) Establish the manner and method of payment of appropriate franchise fees directly to municipalities and counties by a state franchisee;

(10) Establish civil penalties not to exceed ten thousand dollars (\$10,000) per day for violation of the franchise agreement, this part, applicable federal law, or applicable rules, all in accordance with the uniform administrative procedures act;

(11) Develop requirements for the provision of and financial support for an I-NET consistent with federal law and this part; and

(12) Promulgate any rules necessary to carry out its responsibility under this part.

The rules promulgated by the TCVSA shall be promulgated in accordance with the uniform administrative procedures act, title 4, chapter 5. Such rules shall have the effect of law.

SECTION 8.

(a) The franchise fee for a state franchise shall be based on a percentage of the franchisees' gross revenues.

(b) The state franchise agreement shall define gross revenues as:

All cash compensation or revenues of any kind or nature received directly or indirectly by the grantee, its subsidiaries or parent which are cable operators, arising from, attributable to, or in any way derived from the provision of cable services by the grantee within the franchise area, as long as all such gross revenues are in accordance with generally accepted accounting principals.

(c) Gross revenues shall not include:

- (1) Any local, state or federal tax or the FCC user fee;
- (2) Unrecovered bad debt; and
- (3) Any PEG amounts recovered from subscribers.

(d) Gross revenues includes, but is not limited to:

- (1) Monthly fees charged to subscribers for basic service;
- (2) Monthly fees charged to subscribers for any optional, premium or per-channel or per-program service;
- (3) Monthly fees charged to subscribers for any tier of service other than basic service;
- (4) Installation, disconnection, re-connection, wire maintenance fees and franchise fees collected from subscribers;
- (5) Change-in-service fees, leased channel fees, late fees, converter fees, rentals or sales, and advertising revenues; and
- (6) Revenues derived by the grantee from home shopping channel sales to subscribers. Advertising and home shopping revenues shall be allocated on a pro-rata basis based on the proportion of total subscribers on the grantee's cable system represented by subscribers residing within the franchise area, provided they cannot be calculated on a per-franchise basis.

(e) Gross revenues as defined herein shall be the basis for computing the franchise fee.

SECTION 9. All monies collected under this part by the TRA shall be deposited and held by the TRA in a manner prescribed by the comptroller. The TRA shall designate sufficient funds to meet all expenses incurred by the TSVSA in carrying out its responsibility under this part and such monies shall be held in the "TCVSA Operational Fund" in a manner prescribed by the comptroller. The funds shall be available to fund the operations related to administration of

the responsibilities of the TRA and TCVSA under this part. As the amount of funds allows, the TRA and the TCVSA may hire employees or contract with individuals or entities to carry out administrative responsibilities under this part. No other use of these funds is authorized.

SECTION 10. The TRA, in conjunction with the TCVSA, shall prepare a report annually containing the following:

- (1) The number of state franchise applications filed;
- (2) The number of state franchise applications approved;
- (3) The number of side agreements approved and the terms of such side agreements;.
- (4) The number of state franchise applications denied and the reasons for these denials;
- (5) The service areas covered by each state franchisee;
- (6) The number of consumer complaints and the success of the complaint resolution process;
- (7) The level of competition among video and cable providers in the state;
- (8) The effect of competition, including, but not limited to, prices, consumer access, quality of customer service, consumer protections, and the expansion of programming and service options;
- (9) The efficacy of the state franchise process and the state franchise agreement, particularly in light of the evolution of technology and advancements in the transmission of video and cable programming and in the provision of telecommunications services; and
- (10) Any other information the TRA or TCVSA deems pertinent.

The report shall be filed with the speaker of each house of the general assembly and chairs and membership of the senate commerce, labor and agriculture committee, the

house commerce committee and the state and local government committees in each house.

SECTION 11.

(a) An entity or person providing cable or video service on the effective date of this act under a franchise previously granted by a municipality or unincorporated county is not subject to the franchise provisions of this part with respect to the municipality or county until the franchise expires, or the cable or video service provider elects to terminate its existing local franchise and obtain a state franchise under this part and in accordance with the rules established by the TCVSA. In the event an entity or person is providing cable or video service on the effective date of this act under a franchise previously granted by a municipality or county that has expired, such entity or person shall have the right to either negotiate a local franchise agreement or apply for a state-issued franchise; provided, however, in the event that a municipality or county is unable to successfully negotiate a local franchise within a reasonable time period, such municipality or county may at its sole election require an entity or person providing cable or video service to seek a state issued franchise.

(b) A state franchise issued pursuant to this part supersedes and is in lieu of any authority and approval required by a local franchising authority as of the date of enactment of this act.

SECTION 12. A state franchisee may designate that portion of a subscriber's bill attributable to any franchise fee imposed pursuant to this part, and recover that amount from the subscriber as a separate item on the bill.

SECTION 13.

(a) The state franchise agreement shall include consumer protection standards and customer service requirements, including procedures for resolving complaints that are consistent with applicable federal and state law.

(b) State franchisees must comply with customer service requirements found in 47 C.F.R. 76.309(c) as well as those established by the TCVSA and included in the franchisee's franchise agreement.

(c) Nothing in this section precludes any individual subscriber's right to bring a claim regarding customer service to a court of competent jurisdiction.

SECTION 14.

(a) The state franchise agreement shall include deployment standards developed by the TCVSA that afford the citizens of this state greater access to cable and video services and facilitate compliance with the anti-discrimination protections adopted pursuant to this part. Any provision of the state franchise agreement adopted pursuant to this section shall:

(1) Comply with applicable federal and state laws and regulations; and

(2) Seek to balance the goal of offering the state's citizens improved access to cable and video services with the economics affecting providers seeking to offer such services in a state with varying concentrations of its population and densities of households.

(b) This part does not:

(1) Mandate universal access to cable and video service;

(2) Require a state franchisee to offer every household within a particular municipality or county access to cable or video service before any household within that community has access to such service;

(3) Require a state franchisee to offer cable or video service beyond the capacity of its existing facilities before it has begun providing service;

(4) Require a state franchisee to offer cable or video service in buildings or developments to which it cannot obtain access;

(5) Require a state franchisee to offer cable or video service to areas or subscribers it cannot reach using standard technical solutions; or

(6) Require a state franchisee to offer cable or video service in areas where it cannot obtain access to and use of the public rights of way.

(c) Any entity making application to the TRA for a state cable or video service franchise must submit a deployment plan, consistent with the deployment standards adopted by the TCVSA, this part, and the applicable rules, that clearly includes a schedule detailing its planned deployment of service within its defined service area. An applicant shall be prepared to commence its deployment plan within one hundred twenty (120) days of the TRA's decision to grant the applicant a state cable or video service franchise.

(1) A state franchisee may apply to the TRA for an extension of time to meet its deployment standards or the one hundred twenty-day commencement requirement if one or more of the following apply:

(A) The inability to obtain access to public and private rights-of-way under reasonable terms and conditions;

(B) Developments or buildings being inaccessible using reasonable technical solutions under commercially reasonable terms and conditions;

(C) Developments or buildings not being subject to competition because of existing exclusive service arrangements;

(D) Natural disasters;

(E) Factors beyond the control of the state franchisee; or

(F) Extraordinary circumstances as determined by the TRA.

(2) The TRA may grant the extension only if the provider has made substantial and continuous effort to meet the requirements of this section. If an extension is granted, the TRA shall establish a new compliance deadline.

SECTION 15.

(a) As used in this section:

(1) "Minority-owned business" means a business enterprise that is at least fifty-one percent (51%) owned by a minority individual or group(s), or, if the business is publicly-owned, the stock of which is at least fifty-one percent (51%) owned by one (1) or more minority groups, and whose management and daily business operations are controlled by one (1) or more of those individuals. State franchisees shall presume that minority includes, but is not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups, as defined herein;

(2) "Women-owned business" means a business enterprise that is at least fifty-one percent (51%) owned by a woman or women, or, if the business is publicly-owned, the stock of which is at least fifty-one percent (51%) owned by one (1) or more women, and whose management and daily business operations are controlled by one or more of those individuals;

(3) "Disabled veteran" means a veteran of the army, navy or air service of the United States with a service-connected disability; and

(4) "Other groups" means those groups whose members are found to be disadvantaged by the federal small business administration pursuant to

§8(d) of the federal Small Business Act, as it may be amended from time to time, or the federal secretary of commerce pursuant to §5 of federal Executive Order 11625.

(b) A state franchisee pursuant to this act shall annually file with the TRA a minority, women and disabled veteran-owned business participation plan that demonstrates an intention to actively solicit bids from the identified businesses when establishing, providing or expanding cable or video services and related support facilities and to maximize participation of the defined businesses through both prime and second tier business contracting opportunities. Such plan shall contain the certificate holder's plan for purchasing goods and services from minority, women and disabled veteran-owned businesses and information on programs, if any, to provide technical assistance to such businesses. Each holder of a state-issued certificate of franchise authority shall make a concerted effort to follow its minority, women and disabled veteran-owned business participation plan.

(c) In addition, by January 31 of each year, any state franchisee pursuant to this act shall prepare and submit a report to the TRA entitled the "Video Services Minority, Women and Disabled Veteran-Owned Business Participation Report." Such report shall provide the results of the state franchisee's adherence to the plan filed pursuant to subsection (b). The TRA shall receive the reports and shall annually transmit a synopsis of the reports to the chairs and membership of the senate commerce, labor and agriculture committee and the house commerce committee.

SECTION 16.

(a) Nothing in this part precludes the exercise of police powers by municipalities or counties with respect to public rights-of-way, including the adoption and enforcement of any proper ordinances or resolutions.

(b) Nothing in this part diminishes or derogates from the ordinances or resolutions duly adopted by the governing bodies of each municipality and county and applicable to occupants or users of the public rights of way.'

(c) The state franchise agreement as well as any rules or regulations promulgated and enforced under this part shall require any state franchisee to abide by the rights-of- way ordinances or resolution of the municipality in which such service is provided and any applicable state law or rules.

(d) Nothing in this part confers authority upon a municipality or county to require any cable or video service provider to negotiate a local cable or video service franchise agreement with a municipality or county. The decision to choose whether to use either the state franchise process or the local process is within the sole discretion of the cable or video service provider, except as provided in Section 11 (a), and the provisions of Tennessee Code Annotated, Title 7, Chapter 59, Part 1, are specifically preserved.

SECTION 17. The state franchise agreement shall include provisions related to the provision of public, educational, and governmental access channels, hereafter PEG, that:

(1) Preserve the existing number of channels, any PEG channel funding and the current level of programming and quality of services afforded by the incumbent provider under a local franchise agreement, while also allowing for the addition of new channels in those municipalities offering PEG programming on the date of enactment of this part;

(2) Allow for the establishment of PEG channels and the transmission of PEG programming in those municipalities where PEG channels and programming do not exist on the date of enactment of this part;

(3) Requires that a state franchisee designate a sufficient amount of capacity on its network to allow the provision of PEG channels required in this section. Each

channel shall, with respect to the transmission of an analog signal or channel, be capable of carrying a television signal equal to or superior to a National Television System Committee (NTSC) and shall, with respect to the transmission of a digital signal or channel, be capable of carrying a television signal equal to or superior to a digital cable channel or high definition cable channel, should the PEG provider choose to adopt the HDTV format;

(4) Provide that PEG channels shall all be carried on the basic tier and available to the widest possible range of customers without the need for any equipment or hardware other than that which may be required to receive the lowest cost tier of service.

(A) To the extent possible, the PEG channels shall be the same channel numbers used by the incumbent cable operator under a local franchise agreement on the date of enactment of this part, unless prohibited by federal law.

(B) PEG channels shall not be changed without the agreement of the local entity unless required by federal law.

(5) Ensure the continuation of the existing allocation of costs, under a local franchising agreement, associated with capital investment, the purchase and maintenance of equipment, operation and maintenance of PEG facilities as well as the formatting of PEG programming for transmission in those municipalities in which PEG channels are transmitting on the date of enactment of this part:

(A) The TCVSA shall not require the establishment of redundant facilities or systems or require the duplication of PEG programming or services within those areas served by more than one cable or video service provider.

(B) The TCVSA shall make every effort to ensure that, in the event more than one cable or video service provider is offering service within a municipality, the costs associated with capital investment, the purchase and maintenance of

equipment, the operation and maintenance of PEG facilities and the transmission of PEG programming is proportionately borne by all providers offering service within the municipality.

(6) Provide that an incumbent provider that is required to pay a PEG fee, grant or any similar payment to a municipality under the terms of a local franchise agreement shall continue to make such payments in full to the municipality if such provider either allows its local franchise agreement to expire and chooses not to seek a renewal of a local franchise or voluntarily terminates its local franchise agreement but continues to offer cable or video service within the municipality under a state franchise agreement. In the event that more than one provider is offering service within the municipality, then any payments required under this subsection shall be allocated among all provider proportionately.

(7) Provide that, with respect to any new PEG channel established pursuant to this part, the costs associated with capital investment, the purchase and maintenance of equipment, operation and maintenance of PEG facilities as well as the formatting of PEG programming for transmission shall be borne by the cable or video service provider. In the event that more than one provider is offering service within the municipality, then any payments required under this subsection shall be allocated among all provider proportionately.

(8) Provide that the costs associated with transmission equipment and installing, connecting, and maintaining the interconnectivity between a PEG facility and the provider's head end shall be borne by the provider;

(9) Prohibit the state franchisee from taking actions that alter or otherwise adversely affect the functionality, formatting or transmission of PEG programming that result in a deterioration of the functionality of PEG signals, the

transmission of PEG programming, the picture quality, or the absence of closed captions and Secondary Audio Programming. The PEG access signal and capacity shall be of similar quality and functionality to that offered by commercial channels.

(10) Prohibit the operator from appropriating PEG programming for use on any other channel or in any other jurisdiction covered by the operator without the consent of the PEG channel.

(11) Allow a state franchisee, consistent with federal law, this part, and the rules adopted pursuant to this part, to designate that portion of a subscriber's bill directly related to compliance with the requirements imposed pursuant to this part, and to recover that amount from the subscriber as a separate item on the bill.

SECTION 18. A state franchisee shall, to the extent required under federal law, provide an institutional network to those municipalities within its service area consistent with this part and applicable rules.

SECTION 19. A state franchisee may not deny access to service to any potential residential subscriber or group of potential residential subscribers because of the subscriber's race or income or the race or income of the residents in the local area in which the group resides.

SECTION 20. A municipality or county may conduct regular audits to determine the accuracy of franchise fees remitted by a state franchisee and may refer any findings of improper franchise fee payments to TRA for proper remedy, including potential imposition of penalties.

SECTION 21. Should a state franchisee be found by the TRA to be in noncompliance with any requirement of this part, the TRA may, in addition to other remedies, order the holder of the state franchise, within a specified reasonable period of time, to cure the noncompliance.

SECTION 22. Notwithstanding the provisions of § 4-5-209, the Tennessee Cable and Video Service Authority and the Tennessee Regulatory Authority is authorized to promulgate public necessity rules to implement the provisions of this act.

SECTION 23. The Tennessee Cable and Video Service Authority created in this part shall terminate on June 30, 2011, unless its existence is otherwise continued by the general assembly.

SECTION 24. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this part.

SECTION 25. This act shall take effect upon becoming a law, the public welfare requiring it, for the purpose of appointing members of the TCVSA and promulgating necessary rules and adopting a state franchise agreement by the TCVSA. For all other purposes, it shall take effect at the time the TCVSA adopts rules and a state franchise agreement to be used by the state and state franchisees, but in any case no later than January 1, 2010, the public welfare requiring it.